

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ALYSSA D. BUSTAMANTE,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD77493

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: September 29, 2015

Appeal From:

Circuit Court of Cole County, MO
The Honorable Patricia S. Joyce, Judge

Appellate Judges:

Division One
Cynthia L. Martin, P.J., Joseph M. Ellis, and James Edward Welsh, JJ.

Attorneys:

Elizabeth Carlyle, Columbus, MO

Counsel for Appellant

Attorneys:

Evan Buchheim, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**ALYSSA D. BUSTAMANTE, Appellant, v.
STATE OF MISSOURI, Respondent**

WD77493

Cole County

Before Division One Judges: Martin, P.J., Ellis, and Welsh, JJ.

Alyssa Bustamante appeals the circuit court's judgment denying her Rule 24.035 motion for post-conviction relief after an evidentiary hearing. She claims that she was denied effective assistance of counsel and that the statute under which she was initially charged with first-degree murder is unconstitutional as applied to her, in that she was a juvenile at the time of her crimes.

Affirmed.

Division One holds:

The circuit court did not err in finding that plea counsel was not ineffective for failing to assure that Bustamante was aware of and understood the effect of a pending United States Supreme Court case addressing life-without-parole for juveniles (*Miller v. Alabama*, 132 S.Ct. 2455 (2012)). The record shows (1) that Bustamante was advised by her attorneys before she pleaded guilty that the issue of life-without-parole for juveniles was going to be decided in the *Miller* case and (2) that she understood its effect on her case.

The circuit court did not err in rejecting Bustamante's claim that the statute under which she was initially charged with first-degree murder (§ 565.020, RSMo) is unconstitutional as applied to her, in light of *Miller*. In two post-*Miller* cases, the Missouri Supreme Court had already decided the precise issue raised by Bustamante; thus, the circuit court properly followed those rulings.

The circuit court did not err in finding that plea counsel was not ineffective for failing to challenge Bustamante's adult certification by seeking a remand to the juvenile court. Bustamante failed to present any evidence related to that claim at the evidentiary hearing; thus, the court did not err in finding that she had abandoned the claim. Bustamante also does not argue or show that counsel's failure to challenge the certification affected the voluntariness of her plea.

Opinion by James Edward Welsh, Judge

September 29, 2015

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